

ESTTA Tracking number: **ESTTA59223**

Filing date: **12/27/2005**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Zimmer Technology, Inc.
Granted to Date of previous extension	12/31/2005
Address	150 South Wacker Drive, Suite 1200 Chicago, IL 60606 UNITED STATES
Correspondence information	Zimmer Technology, Inc. 150 South Wacker Drive, Suite 1200 Chicago, IL 60606 UNITED STATES intear@bakerd.com, sue.michael@bakerd.com Phone:317-237-0300

Applicant Information

Application No	78558667	Publication date	11/01/2005
Opposition Filing Date	12/27/2005	Opposition Period Ends	12/31/2005
Applicant	Surgistar, Inc. 2310 La Mirada Dr. Vista, CA 92081 UNITED STATES		

Goods/Services Affected by Opposition

Class 010. First Use: 2005/01/03 First Use In Commerce: 2005/01/03
All goods and services in the class are opposed, namely: Microsurgical blades and knives for general surgery, dental surgery, and eye surgery

Attachments	NEXGEN opposition.PDF (3 pages)
Signature	/M. Sue Michael/
Name	M. Sue Michael, Baker & Daniels LLP
Date	12/27/2005

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

ZIMMER TECHNOLOGY, INC.)	U.S. Trademark Application Serial No. 78/558,667
)	
Opposer,)	Mark: NEXGEN
)	
v.)	Opposition No.: _____
)	
SURGISTAR, INC.)	
Applicant,)	

NOTICE OF OPPOSITION

Zimmer Technology, Inc., a Delaware corporation, having a principal place of business at 150 South Wacker Drive, Suite 1200, Chicago, IL 60606 ("Opposer"), believes it would be damaged by the registration of the mark NEXGEN that is the subject of U.S. Trademark Application Serial No. 78/558,667 ("the '667 Application") and hereby opposes registration of same. In support of its opposition, Opposer states as follows:

1. Opposer is a worldwide leader in designing, manufacturing and marketing orthopedic implants, surgical devices, dental implants and other medical devices.

2. Opposer is the owner of all right, title and interest in and to the trademark NEXGEN for use in conjunction with orthopedic surgical devices, namely, "orthopedic knee prosthesis and instruments therefor."

3. Opposer is the owner of all right, title and interest in and to U.S. Trademark Registration No. 1,902,163 ("the '163 Registration") and U.S. Trademark Registration No. 1,944,579 ("the '579 Registration") for the mark NEXGEN. Opposer has used its NEXGEN mark in conjunction with orthopedic surgical devices since at least as early as March 25, 1994.

4. Through its long-standing use of the NEXGEN mark in conjunction with orthopedic surgical devices, the purchasing public has come to associate the term NEXGEN with Opposer.

5. Through its long-standing use of the NEXGEN mark in conjunction with orthopedic surgical devices, Opposer has developed exceedingly valuable goodwill in the NEXGEN mark.

6. Surgistar, Inc. ("Applicant") has, through the '667 Application, sought to register the mark NEXGEN for "microsurgical blades and knives for general surgery, dental surgery, and eye surgery" ("Applicant's Goods").

7. There is no issue as to priority, as Opposer has used its NEXGEN mark prior to the filing date of the '667 Application.

8. There is no issue as to priority, as Opposer has used its NEXGEN mark prior to any claimed use by Applicant of the NEXGEN mark.

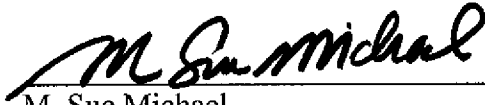
9. There is no issue as to priority, as Opposer filed the applications for the '163 Registration and the '579 Registration and obtained such registrations prior to any claimed use of the NEXGEN mark by Applicant and prior to the filing date of the '667 Application.

10. Opposer will be damaged by registration of the NEXGEN mark by Applicant because such registration will grant to Applicant *prima facie* evidence of the exclusive right to use the mark in conjunction with Applicant's Goods and such use would be likely to cause confusion or mistake or to deceive as to the affiliation, connection or association of Applicant with Opposer and as to the origin, sponsorship and approval of Applicant's goods, services and other commercial activities by Opposer.

11. Such confusion would cause irreparable harm to Opposer in that any defects or fault found with Applicant's goods, services or other commercial activities would erroneously be attributed to Opposer, thereby harming Opposer's reputation and damaging its substantial goodwill in the NEXGEN mark.

WHEREFORE, Opposer respectfully requests that the Board deny registration of Applicant's NEXGEN mark sought through the '667 Application and award Opposer all other relief to which it is entitled.

Respectfully submitted,



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Attorneys for Opposer

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that this notice is being filed with the Trademark Trial and Appeal Board, Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451, by using the ESTTA electronic filing system, this 27th day of December 2005.



M. Sue Michael